THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

–

W.A.No. 1404 of 2005

Between:

G. Raja Babu

…. Appellant

and

The Financial Advisor & Chief Accounts Officer, South Central Railway, Rail Nilayam, Secunderabad & another

…. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

–

W.A.No. 1404 of 2005

JUDGMENT: *(per the Hon'ble Sri Justice B. Prakash Rao)*

Heard Sri J.M. Naidu, the learned counsel appearing for the appellant, and also Sri J. Ashok Kumar, the learned counsel for the respondent.

This appeal is at the instance of the unsuccessful writ petitioner, who seeks to assail the order dated 18.07.2005 passed by the learned Single Judge, dismissing W.P.No.21562 of 2002, which was filed seeking *mandamus* as against the action of the respondents in denying him the second financial up-gradation under ACP scheme to pay scale of Rs.4500-7000 RS under the impugned order dated 16.10.2002.

The case of the appellant is that he was initially appointed as a constable. Subsequently, since he knew the driving, he was appointed as a driver in ex-cadre post and later on in a regular post and he was discharging his duties. Thereupon, he was also given a promotion as Head constable. Yet, the appellant claims that under the very same scheme he should have been given the second financial up-gradation to which he would have been normally entitled to, had he continued in the hierarchy as the Head constable.

The learned Single Judge, by considering the respective submissions made on behalf of both the parties, did not find favour with the appellant's claim and rejected the same, on the ground that the appellant has already got promotion as Head Constable and was extended one financial up-gradation under A.C.P. scheme, and he cannot claim for the second financial up-gradation under the said scheme.

Having heard the learned counsel on either side and having perused the material available on record, it is clear that due to unfortunate circumstances the appellant had to opt for the driver's post, since he knew the driving. He has been denied the regular benefit to which he would have normally been entitled to and he would have got the regular post, had he continued in the hierarchy of Head Constable, but for the intervening appointment as driver. These are all the

circumstances which have to be taken into consideration by the competent authority for considering the claim of the appellant.

The learned counsel for the appellant submits that similarly placed employees, who have been appointed at the same time along with the appellant, have been given all benefits and also further promotions. According to him, the appellant is being denied all these opportunities because of his intervening services as driver.

This Court would not go into all these questions at this juncture. We are in entire agreement with the findings as arrived at by the learned Single Judge. We do not find any merits in the appeal. However, we leave it open to the appellant to submit a representation to the second respondent within four weeks from today, for consideration of his case in a more apt and sympathetic manner, having regard to the chequred services which he has put in. On filing such a representation, the second respondent shall consider the same in a proper perspective and pass appropriate orders within two months thereafter.

Subject to the above, the writ appeal is dismissed. There shall be no order as to costs.

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(B.PRAKASH RAO.J)

(D. APPA RAO.J)

ksld

Dt.17.02.2006